SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-1375

CITY OF HICKORY HILLS, ILLINOIS,
A MUNICIPAL CORPORATION,
Petitioner,

vs.

THE VILLAGE OF BRIDGEVIEW, ILLINOIS, A MUNICIPAL CORPORATION, EDWARD V. HANRAHAN, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS, WALTER FRECH, IRENE FRECH, WILLIAM CAZEAU, MARLENE CAZEAU, JOSEPH SALECKI, RUTH SALECKI, ROBERT BILY, BEVERLY BILY, LOUIS BULGER, EDNA BULGER, ARCHER REALTY COMPANY, INC., AN ILLINOIS CORPORATION AND TERMINAL CITY CORPORATION, FORMERLY KNOWN AS CLEARING REALTY SALES, INC., AN ILLINOIS CORPORATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT, JOINTLY OR IN THE ALTERNATIVE.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT, JOINTLY OR IN THE ALTERNATIVE.

The petitioner, City of Hickory Hills, Illinois, a Municipal Corporation, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Appellate Court of the State of Illinois, First District, entered in Docket 54923 on September 15, 1971 and to review the

Order dismissing the appeal in Docket 36087 of the Supreme Court of the State of Illinois entered on March 13, 1961, jointly or in the alternative.

OPINIONS BELOW.

The opinion of the Appellate Court of the State of Illinois, First District, is reported at 1 Ill. App. 3d 931, 274 N. E. 2d 925 (App. A23). The Order of the Circuit Court upon which an appeal was taken to the Appellate Court of Illinois, First District, was issued on March 20, 1970 (App. A19). The Order of the Supreme Court of Illinois Docket No. 44798 denying leave to appeal from the Appellate Court decision was issued on January 26, 1972 (App. A27).

The First Order in Docket No. 36087 involving the stranger to the proceeding was entered on January 6, 1961 (App. A13). The Order denying the First Motion of the stranger to the proceeding was issued on January 16, 1961 (App. A14). The Order involving the Second Motion to dismiss the appeal by the stranger to the proceeding in Docket No. 36087 was issued on February 24, 1961 (App. A16). The Order of the Supreme Court of Illinois dismissing the appeal in Docket No. 36087 on the Second Motion to dismiss the appeal by the stranger to the proceeding, was entered on the 14th day of March, 1961 (App. A17).

JURISDICTION.

The Opinion and Judgment of the Appellate Court of Illinois, First District, were filed and entered on September 15, 1971. A timely petiton for leave to appeal from the Appellate Court decision was denied on January 26, 1972 by the Supreme Court of Illinois.

The petitioner contends that the order dismissing the appeal in Docket No. 36087 of the Supreme Court of Illinois entered on the 14th day of March, 1961, is void.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3).

QUESTIONS PRESENTED.

1. Whether due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution was denied when:

A. An order dismissing an appeal was entered by the Supreme Court of Illinois following a Motion by a stranger to the proceedings, and

B. A stranger to proceedings on review in the Supreme Court of Illinois was allowed to present by affidavit evidence not presented to the Trial Court so as to constitute the exercise of original jurisdiction by said Court, in violation of Article VI, Section 2 of the Constitution of the State of Illinois of 1870, and

C. The order dismissing an appeal left standing an erroneous Trial Court decision, and where the order of the Supreme Court of Illinois so wrongfully entered has been used as res adjudicata in subsequent Court proceedings?

CONSTITUTIONAL PROVISIONS INVOLVED.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA, Amendment 14, Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens

of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

THE CONSTITUTION OF THE STATE OF ILLINOIS OF 1870, Article VI, Section 2.[1]

> The Supreme Court shall consist of seven judges, and shall have original jurisdiction in cases relating to the revenue, in mandamus and habeas corpus, and appellate jurisdiction in all other cases. One of said judges shall be chief justice; four shall constitute a quorum, and the concurrence of four shall be necessary to every decision.

STATEMENT OF THE CASE.

On November 18, 1959, Benjamin S. Adamowski, State's Attorney of Cook County, Illinois, filed a complaint in Quo Warranto in the Superior Court of Cook County, Illinois. The State's Attorney sought to invalidate a series of strip annexations made by the Village of Bridgeview, Illinois. The contested strip annexations began with an annexation of a sixty-six foot (66') wide strip of railroad right-of-way

1. On November 6, 1962, by referendum, the Constitution of the State of Illinois of 1870 was amended by adding a new Article VI enlarging the powers of original jurisdiction of the Court. Article VI, Section 5 as adopted, read in part as follows: "the Supreme Court may exercise original jurisdiction in cases relating to the revenue, mandamus, prohibition and habeas corpus, *such original jurisdiction as may be necessary to the complete determination of any cause on review*, and only appellate jurisdiction in all other cases." (Emphasis added.) On December 15, 1970 a new Constitution was adopted by the people of the State of Illinois and became effective July 1, 1971. The enlargement of the original jurisdiction of the Supreme Court was retained in Article VI, Section 4(a) of the Constitution of 1970, which reads as follows: "the Supreme Court may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus *and as may be necessary to the complete determination of any case on review.*" (Emphasis added.)

which was over a mile and one-half in length and was contiguous to the Village of Bridgeview to the extent of only sixty-six feet (66′). The Superior Court of Cook County entered judgment in favor of the Village of Bridgeview on May 9, 1960. [App. A1.]

A direct appeal of the judgment order to the Supreme Court of the State of Illinois was taken by the State's Attorney in Docket No. 36087. On November 5, 1960, the State's Attorney filed his brief in Case No. 36087.

On January 4, 1961, over six months after the filing of the direct appeal by Benjamin S. Adamowski, a stranger to the proceedings, Clearing Realty Sales, Inc., an Illinois Corporation, without any leave to intervene by any order of Court, served Notice on the newly elected State's Attorney of Cook County, Daniel P. Ward, that it was going to move for the dismissal of the appeal before the Honorable Walter V. Schaefer, one of the Justices of the Supreme Court of Illinois on January 6, 1961. On January 6, 1961, Justice Schaefer continued the Motion to be passed on by the Illinois Supreme Court in session. [App. A13.] On January 16, 1961, the Motion to Dismiss the appeal filed by the stranger to the proceedings was denied. [App. A14.]

On February 21, 1961, after Briefs were filed by the Village of Bridgeview, appellee in the direct appeal, Clearing Realty Sales, Inc., a stranger to the proceeding again without leave to intervene and without any order of Court permitting him to do so, served Notice on Daniel P. Ward, the newly elected State's Attorney of Cook County, that it would again appear before the Honorable Walter V. Schaefer on February 24, 1961, and again present a Motion identical to the first Motion to Dismiss the direct appeal. On February 24, 1961, Justice Schaefer entered an Order that the Motion and Affidavits and Suggestions in Support thereof, be filed with the Clerk of the Supreme Court of Illinois, to be passed upon by the Court. [App. A16.]

Both Motions to Dismiss filed by the stranger to the proceedings were purportedly based on Section 92(e) [sic] [92(1)(e)?] of the Civil Practice Act, which is now Clause 5 of paragraph (a) of Illinois Supreme Court Rule 366, Illinois Revised Statutes, 1971, Chapter 110A § 366(a)(5). Both Motions were supported by affidavits which clearly stated facts and evidence not considered in the trial court proceedings. The two affidavits of Joseph McGaw and Martin Moreland filed in support of the second Motion to Dismiss the direct appeal contained facts which occurred for the most part after the rendition of the judgment by the Superior Court of Cook County. Included in the new set of additional facts is mention of a proposed expenditure of $38,000,000.00. The newly elected State's Attorney for Cook County, Daniel P. Ward,[1] offered no resistance to, nor did he file any objections to the two Motions to Dismiss the appeal filed by the stranger to the proceedings, the Clearing Realty Sales, Inc.

On March 14, 1961, after Briefs had been filed by the parties to the direct appeal, the Supreme Court of the State of Illinois allowed the second identical motion filed by the stranger to the proceeding, Clearing Realty Sales, Inc., and summarily dismissed the appeal without comment or publication. [App. A17.]

In November of 1969, the Village of Bridgeview filed a Complaint for Ejectment, Declaratory Judgment and Equitable Relief in the Circuit Court of Cook County, Illinois, against the City of Hickory Hills. The Complaint sought the removal of water mains and sewer lines installed by the City of Hickory Hills in a street known as 77th Avenue which the Village of Bridgeview claimed to be within their corporate limits. The City of Hickory Hills claimed jurisdiction of the disputed territory by virtue of a 1957 an-

1. In 1966 Daniel P. Ward was elected Justice of the Supreme Court of the State of Illinois, and is currently sitting in such capacity.

nexation based on an order of the County Court of Cook County. This suit was consolidated with a Mandamus action brought against the Village of Bridgeview by certain owners of property along 77th Avenue. The Village of Bridgeview pleaded the order entered in the Quo Warranto proceedings in the Superior Court of Cook County as being res adjudicata of the question of jurisdiction of the disputed territory.

The City of Hickory Hills in a brief and argument filed with the trial judge on March 10, 1970, argued that it would be deprived of property rights without due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States. On pages 3 and 4 of the brief and argument, the City of Hickory Hills argued on behalf of the natural persons residing on the disputed territory as well as the City of Hickory Hills, that property rights and civil rights were being denied without due process of law. The City of Hickory Hills contended on page 4 that the appeal perfected by the State's Attorney from the judgment order in the Superior Court of Cook County, was never decided on its merits and that the manner in which the appeal was dismissed was a deprivation of constitutionally protected rights. The City of Hickory Hills also argued on page 4 of the brief that the constitutional requirements of adequacy and notice of the proceedings were not met. It was also argued that there was inadequate representation in the Supreme Court, and the order of dismissal left standing a ruling which was not amply supported by the manifest weight of the evidence or deduced from the uncontroverted facts of the strip and corridor annexations.

On March 20, 1970, the Circuit Court of Cook County entered judgment in favor of the Village of Bridgeview. [App. A19.]

An appeal of the decision of the Circuit Court of Cook County was taken to the Appellate Court of Illinois, First District. On page 15 of the Brief and argument for the City of Hickory Hills filed in the Appellate Court, the City of Hickory Hills argued that the dismissal of the appeal by the stranger to the proceedings, Clearing Realty Sales, Inc., in Supreme Court Docket No. 36087, was highly unusual, irregular and repugnant to the concept of due process of law insofar as due process of law in civil proceedings is guaranteed under both the Illinois and Federal Constitutions. Again on page 22 of the brief filed in the Appellate Court by the City of Hickory Hills, it was argued that the dismissal of the appeal in the Supreme Court was a denial of constitutionally guaranteed rights of due process of law in civil proceedings preserved to everyone including the petitioners for annexation to the City of Hickory Hills.

On September 15, 1971, the Appellate Court of Illinois, First District, delivered an opinion affirming the judgment of the Circuit Court of Cook County. [App. A23.] The judgment order of the Circuit Court and the opinion of the Appellate Court were silent as to the questions raised by the City of Hickory Hills concerning the denial of due process of law as guaranteed by the Illinois Constitution and the United States Constitution.

A timely Petition for a Leave to Appeal the decision of the Appellate Court was filed in the Supreme Court of Illinois on November 10, 1971. On page 3 of the petition, the City of Hickory Hills stated that one of the points relied on for reversal of the Appellate Court decision was that the Supreme Court, in permitting a stranger to enter the proceeding in 1961 without obtaining leave of court to intervene pursuant to established procedures, deprived the City of Hickory Hills of rights guaranteed under the Constitution of the State of Illinois and the Fourteenth Amend-

ment to the United States Constitution. On pages 17 and 18 of the Petition for Leave to Appeal, the petitioner again stated that the Appellate Court's reliance upon the principle of res adjudicata based upon a void order of the Supreme Court as being dispositive of the question of municipal jurisdiction was a denial of due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution.

On January 26, 1972, the Supreme Court of the State of Illinois denied the petition of the City of Hickory Hills for Leave to Appeal the decision of the Appellate Court. [App. A28.]

REASONS FOR GRANTING THE WRIT.

Reliance Upon the Principle of Res Adjudicata Based Upon a Void Order of the Supreme Court of Illinois as Being Dispositive of the Question of Municipal Jurisdiction in Subsequent Court Proceedings Is a Denial of Due Process of Law as Guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Reliance upon established court procedures is the expectation of all the component units of a well-ordered society. When the courts deviate from those procedures and deny due process by issuing void orders and judgments, faith in the integrity of our judiciary is shaken. The public interest demands strict discipline and self-regulation in judicial functions so as to guarantee freedom from judicial tyranny.

An order of an appeals court which is void ab initio because it was outside the jurisdiction of the court cannot be the basis for the application of a res adjudicata determination by a lower court in subsequent proceedings. Such res adjudicata decision founded upon the void order is a denial of constitutionally guaranteed rights to due process of law

under the Fourteenth Amendment to the Constitution of the United States.

Our society is founded upon the amalgamation of numerous social units with diverse interests and backgrounds, whether they be ethnic, religious, neighborhood or political units. For our system of government to succeed, it is necessary that those social units adhere to and follow established rules of conduct and procedure, which we all know to be due process. When social units act in reliance upon those procedures, the state operates smoothly, but when those same rules of procedure are ignored, some form of anarchy results.

Paramount in the smooth operation of our collective society is the judicial system. Faith in our courts is the bedrock foundation of our society and places a responsibility on the courts for strict self-discipline.

These proceedings involve the interrelationship between units of local government in the exercise of their responsibility for the protection and promotion of the public interest and welfare and the judicial system of the State of Illinois. The effect of the Order of Dismissal by the Supreme Court of Illinois in 1961 is to leave standing two conflicting judgments of concurrent courts of competent jurisdiction which involve the property, political and civil rights of the public. The refusal by the Supreme Court of Illinois to entertain a Petition for Leave to Appeal is tantamount to a denial of those rights without due process of law and demeans the public interest and welfare.

A. A Court of Review Which Entertains a Motion to Dismiss Filed by a Stranger to the Proceedings Transgresses Upon Basic Principles of Due Process of Law.

In Docket No. 36087, the Supreme Court of Illinois entered an order dismissing an appeal on a motion by a

stranger to the proceedings. This Court has held a stranger to the proceedings may not obtain a dismissal of proceedings on review. *Denver and Rio Grande Railway Company* v. *Canon City and San Juan Railway Co.*, 99 U. S. 463, 473 (1878).

In *Succession of Cummings*, 13 La. App. 566, 128 So. 201 (1930), the Court was presented with a Motion to Dismiss an appeal filed by one who was not a party to the appeal. The Court stated at 128 So. 203:

> . . . [T]hat no appeal having been taken at the term of Court at which the judgment in his favor was rendered and that as he is not a party to the present appeal, it should be dismissed. . . . We do not act on the motion; . . . He is not a party to the appeal, consequently, he has no right to have it dismissed.

In *Thomas* v. *G. H. A. Thomas Co.*, 46 So. 2d 518 (Court of Appeals of Louisiana, 1950), the Court refused to consider a motion which was not filed on behalf of the proper party defendant. The Court stated at 46 So. 2d 519:

> . . . [B]ut it was filed on behalf of G. H. A. Thomas Company, not a defendant-appellee before this Court. Consequently, . . . we are of the opinion that we cannot properly consider this motion to dismiss plaintiff's appeal.

Where a third party defendant in the trial court proceeding was neither designated a party in the appeal nor in a cross-appeal, the Motion to Dismiss the appeal was not considered. *J. T. Majors & Son, Inc.* v. *Lippert Bros., Inc.*, 263 F. 2d 650 (U. S. C. A. 10th Cir. 1958).

One who does not have standing before a Court of Review cannot present a motion to dismiss an appeal. *Allegheny Airlines, Inc.* v. *Lemay*, 448 F. 2d 1341, 1343 (U. S. C. A. 7th Cir. 1971) (Cert. Den. 92 S. Ct. 565).

Clearing Realty Sales, Inc.,[1] was not an original party in the Superior Court of Cook County in 59 S 20597, and it was not added as a party in the Superior Court. Furthermore, Clearing Realty Sales, Inc. did not file a petition for intervention in the Supreme Court, pursuant to the Illinois Revised Statutes, 1959, Chapter 110, Sections 26 and 26.1, and there was no order entered by the Supreme Court of Illinois permitting Clearing Realty Sales, Inc. to be joined as a party in the appellate proceedings. The proper parties in the Quo Warranto proceeding in 1959 were the State's Attorney of Cook County, Illinois, Mr. Benjamin S. Adamowski, and the Village of Bridgeview, Illinois. The Motion to Dismiss the appeal was not filed on behalf of either of these proper parties.

As the movant was not a party to the proceeding, the Supreme Court of Illinois had a duty to apply its own rules of practice, which did not and do not provide for a dismissal of proceedings on review by a stranger where the State's Attorney is representing the People of the State of Illinois.

Further, as the movant attempted to supplement the record by affidavits not presented to the Superior Court, the Supreme Court of Illinois pursuant to its own decisions and its own rules should have prohibited the additional evidence, as the Supreme Court of Illinois did not have original jurisdiction in Quo Warranto proceedings.

Had Clearing Realty Sales, Inc., after the trial proceedings, presented a Petition for Intervention and the Petition been granted, as an Intervenor it would have been bound by the Superior Court record, and could not have raised new issues or facts on review. *In Re Estate of Blyman,* 382 Ill. 520, 526 (1943); *Continental Natl. Bank* v. *Sever,* 393 Ill. 81, 92 (1946).

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1. On January 22, 1962, a certificate of Amendment to the Articles of Incorporation of the Clearing Realty Sales, Inc. was filed with the Secretary of State of the State of Illinois changing its name to Terminal City Corporation.

B. By Accepting Evidence by Affidavit from a Stranger, the Supreme Court of Illinois Exercised Unauthorized and Unlawful Original Jurisdiction and Its Subsequent Order Was a Denial of Procedural Due Process as Guaranteed by the Fourteenth Amendment to the Constitution of the United States to the People of the State of Illinois.

The Motion to Dismiss filed by the stranger to the proceedings was accompanied by affidavits setting forth evidence which had not been presented to the Superior Court. Historically, the Supreme Court of Illinois has prohibited the presentation by parties of new evidence during the appellate process. It has specifically refused to consider affidavits filed for the purpose of presenting new evidence which might indicate the court below erred. *Joyce* v. *Harding,* 288 Ill. 77 (1904). The affidavit submitted by a stranger did not address error in the trial court. If a court on review could not consider an affidavit presented by a party setting forth an alleged fact showing error, certainly affidavits filed by a stranger to the proceedings which present evidence not considered by the trial court was prohibited. *Holmes and others* v. *Trout and others,* 7 Pet. 171, 209 (1833); *Berdelle* v. *Carpentier,* 11 Ill. 2d 295 (1957).

The fundamental requirement that courts of review are bound by the record of the court below is based on elementary rules regarding due process of law. In permitting the additional affidavits there was, in effect, no trial hearing on the contents; their truth, veracity or materiality to the issue were properly before the Superior Court in 59 S 20597. The Supreme Court of Illinois was not a court of competent jurisdiction in regard to the presentation of original evidence. The right to a hearing in a court of competent jurisdiction before final judgment is at the heart of our system of jurisprudence. *Powell* v. *Alabama,* 287 U. S. 45, 68 (1932). It is a minimum requirement that adjudication

be preceded by notice and opportunity for hearing appropriate to the nature of the case. *Mullane* v. *Central Hanover Trust Co.*, 339 U. S. 306, 313 (1949). The hearing establishing a record for review was held in the Superior Court of Cook County, entitled People of the State of Illinois ex rel. Benjamin S. Adamowski, State's Attorney of Cook County v. The Village of Bridgeview, wherein the People of the State of Illinois challenged the annexation of territory made by the Village of Bridgeview. There was no provision for a hearing in the Supreme Court of Illinois in Quo Warranto proceedings whereby a stranger to the proceedings was permitted to present evidence by affidavit which had not been considered in the trial court.

The proper tribunal for receiving evidence by affidavit was the trial court where evidence in such form could have been contested in an adversary proceeding. The provision for a trial court satisfies one of three basic requirements of due process of law, i.e., a hearing. The Supreme Court of Illinois, in allowing a stranger to the proceeding to present a Motion to Dismiss and to present evidence by affidavit which had not been presented in the trial court, failed to "observe that self-discipline required of those entrusted with the ultimate judicial powers." *Rochin* v. *California*, 342 U. S. 165, 171 (1951). As the Supreme Court of Illinois did not exercise self-discipline and abused basic principles of law, this Court must exercise its powers to correct the wrongs committed.

In 1961, the Supreme Court of Illinois could only exercise original jurisdiction, that is, receive evidence, in cases relating to the revenue, mandamus and habeas corpus. In permitting, by order dated February 24, 1961, the presentation of a second Motion to Dismiss and affidavits in support thereof [App. A16] the Supreme Court of Illinois exercised non-existent jurisdictional powers. The Supreme Court of Illinois has specifically addressed itself

to the presentation of evidence during an appeal where the evidence has not been presented to the court below, holding it could only receive evidence while exercising original jurisdiction. *Frietag* v. *Union Stock Yard Co.*, 262 Ill. 551, 555 (1914). In a later case, the Supreme Court of Illinois declared unconstitutional section 92(1)(d) of the Illinois Civil Practice Act, (Illinois Revised Statutes, 1939, Chapter 110, Section 216), insofar as the section attempted to enlarge the original jurisdiction of the Supreme Court of Illinois by permitting evidence to be added during the appellate process. *Schmidt* v. *Life Assurance Society*, 376 Ill. 183, 198 (1941). This principle was affirmed in *Atkins* v. *Atkins*, 393 Ill. 202 (1946). In *Atkins, supra*, affidavits were filed while the case was on review. The Court stated at 393 Ill. 205:

> The facts stated in the affidavits, if admitted in evidence, would be relevant to the question of appellant's good faith in the establishment of a domicile in Nevada. But the constitution of this state forbids this Court exercising original jurisdiction in any cases except those relating to revenue, mandamus and habeas corpus. In all cases other than the three named, the jurisdiction is Appellate only. This provision has been construed to mean that in the review of a record the Court is not privileged to permit either party to introduce evidence into the record which was not made a part of the record while the cause was in the Trial Court.

It must be remembered that Clearing Realty Sales, Inc. was not a party to the proceeding but was allowed to utilize the Illinois Revised Statutes, 1959, Chapter 110, Section 92(1)(e), in presenting its motion to dismiss and affidavits. Section 92 is the section which the Supreme Court of Illinois had ruled could not enlarge its powers of original jurisdiction as set forth in the Constitution of Illinois, 1870, Article VI, Section 2. If parties properly named and

possessing standing before the Court could not present evidence on review, most certainly strangers to the proceedings are likewise bound.

Due process of law as understood in our legal system includes and embraces procedures in state courts empowered to hear appeals, *United States* v. *Mills*, 21 F. Supp. 616, 618 (Dist. Ct. E. D. Pa. 1937); *People* v. *Becker*, 108 C. A. 2d 764, 239 P. 2d 898, 901 (1952), and does not include actions by a state court on review which permit irregular summary and unusual process. *Freeland* v. *Williams*, 131 U. S. 405, 418 (1888).

This Court in *Chicago, Burlington and Quincy Railroad Co.* v. *Chicago*, 166 U. S. 226, 234 (1896); *Brunkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 680 (1929); *Hughes* v. *Superior Court*, 339 U. S. 460, 467 (1949); and *Kreshik* v. *St. Nicholas Cathedral*, 363 U. S. 190, 191 (1959), stated the federal guaranty of due process applies to acts of the judicial branch of state government, particularly where procedure in the State court has violated due process as guaranteed by the Fourteenth Amendment to the Constitution of the United States. *Holmes* v. *Conway*, 241 U. S. 624, 631 (1915).

The Supreme Court of Illinois in exercising powers of original jurisdiction in a Quo Warranto proceeding on review, acted outside its constitutional limitations. This Court has held many times where a court acts outside its jurisdiction, its decision, judgment or order is of no effect. The judgments or orders entered are not voidable, but *void*. *Rose* v. *Himely*, 4 Cranch 241, 269 (1808); *Elliot* v. *Piersol*, 1 Pet. 328, 340 (1828); *Hollingsworth* v. *Barbour*, 4 Pet. 466, 476 (1830); *Williamson* v. *Berry*, 8 How. 495, 541 (1849); *Lamp Chimney Co.* v. *Brass & Copper Co.*, 91 U. S. 656, 659 (1875).

As this Court said in *Voorhees* v. *Bank of the United States*, 10 Pet. 449, 475 (1836):

> The line which separated errors in judgment from the usurpation of power is very definite, and is precisely that which denotes the cases where a judgment or decree is reversible only by an Appellate Court, or *may be declared a nullity collaterally, when it is offered in evidence in an action concerning the matter adjudicated*, or purporting to have been so. In the one case, it is a record importing absolutely verity; in the other, mere waste paper; . . . [emphasis added.]

This Court stated in *Pennoyer* v. *Neff*, 95 U. S. 714, 733 (1877):

> . . . (T)hey then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal *competent by its constitution*—that is, by the law of its creation—to pass upon the subject matter of the suit; . . . [emphasis added.]

The Supreme Court of Illinois also has held where a Court does not have jurisdiction over the subject matter, the judgment is void and of no effect. *Boddiker* v. *McPartlin*, 379 Ill. 559, 566 (1942).

C. A Void Order Cannot Be Dispositive of Questions of Municipal Jurisdiction When It Is Not in Consonance with the Constitution of the State of Illinois, Thereby Violating the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

During the proceedings in the Circuit Court of Cook County in 1970, your petitioner presented by brief arguments demonstrating the earlier case in 1959 was not res adjudicata, asserting the dismissal of the appeal in the Su-

preme Court of Illinois was a violation of due process of law and constitutional rights as guaranteed by the United States Constitution and the Constitution of the State of Illinois. There was no provision for "a man off the street" to enter an appellate proceeding and obtain a dismissal of the appeal. The Circuit Court disregarded these arguments and ruled that the 1959 case was res adjudicata as to municipal jurisdiction over the territory.

The City of Hickory Hills appealed the Circuit Court's decision to the Appellate Court of Illinois—First District. In the brief submitted to the Court, the City maintained the earlier case dismissed by the Supreme Court in 1961 could not be res adjudicata as due process of law had not been observed by the Supreme Court of Illinois in dismissing the appeal. The Appellate Court of Illinois stated in its opinion:

> . . . (U)nder the doctrine of res adjudicata the Quo Warranto proceedings upholding the Bridgeview annexation is dispositive of the question of municipal jurisdiction over the disputed area in the case now before us.

In so holding the Appellate Court of Illinois simply closed its eyes to the unauthorized and unconstitutional acts of the Supreme Court of Illinois.

The City of Hickory Hills filed a Petition for Leave to Appeal in the Supreme Court of Illinois. In petitioning the Supreme Court of Illinois, the petitioner specifically pointed to that Court's abuse of its jurisdictional powers and the obvious violation of due process of law, in permitting a stranger to the proceedings to present a Motion to Dismiss and present additional evidence on review, and further, in granting the Motion to Dismiss. The Supreme Court of Illinois was requested, in effect, to correct its error. The Petition for Leave to Appeal was denied.

In order for a prior judgment or decree to be set up as a bar or by estoppel or under the theory of res adjudicata so as to be conclusive, the court rendering the judgment must have had jurisdiction. *Aspden et al.* v. *Nixon et al.*, 4 How. 467, 497 (1846); *Washington Alexandria & Georgetown S. P. Co.* v. *Sickles, et al.*, 24 How. 333, 342 (1860); *Treinies* v. *Sunshine Mining Co. et al.*, 388 U. S. 66, 78 (1939); *Sherrer* v. *Sherrer*, 334 U. S. 343, 350 (1947). The Supreme Court of Illinois has ruled in like manner in regard to the doctrine of res adjudicata. *Hedlund* v. *Miner*, 395 Ill. 217, 229 (1946). The Supreme Court of Illinois did not have original jurisdiction in 1961, in Quo Warranto proceedings; therefore, it could not legally have received evidence on appeal. But in the *People of the State of Illinois* v. *The Village of Bridgeview*, Docket No. 36087, the Supreme Court of Illinois did receive evidence by affidavit accompanying a motion to dismiss the appeal filed by a stranger to the proceedings. In doing so, the Supreme Court of Illinois acted outside its jurisdictional powers, and therefore the order dismissing the appeal was void and cannot be res adjudicata as to municipal jurisdiction over the territory in question.

This Court has stated in *Jordan* v. *Commonwealth of Massachusetts*, 225 U. S. 167, 174 (1911), that it will exercise its jurisdiction where the Supreme Court of a State has not acted "in consonance" with its constitution and its rules of procedure. This Court's intervention is needed in this cause to set aside a transgression of the laws by which the courts of every state are bound and to preserve judicial integrity. *Lee* v. *Florida*, 392 U. S. 378, 385 (1968). Unless this Court exercises its powers, there is no Court of Last Resort in those cases where the highest state court acts blatantly in violation of its constitutional limitations.

CONCLUSION.

For the foregoing reasons, and in reliance upon the authorities cited, it is urged that the instant Petition for Writ of Certiorari be granted.

Respectfully submitted,

JOSEPH J. KOZLOWSKI,
KOZLOWSKI & SMITH,
127 North Dearborn Street,
Suite 1313,
Chicago, Illinois 60602,
Attorney for Petitioner.

Of Counsel:
JOHN A. SMITH,

Special Counsel:
LOUIS V. KIEFOR,
684 State Line Avenue,
Calumet City, Illinois 60409.

APPENDIX A.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

IN THE SUPERIOR COURT OF COOK COUNTY.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. BENJAMIN S. ADAMOWSKI,
State's Attorney of Cook County,
Plaintiff,
vs.
THE VILLAGE OF BRIDGEVIEW,
a Municipal Corporation,
Defendant.

No. 59 S 20597
Quo Warranto.

JUDGMENT ORDER.

The above cause coming on to be heard by the Court upon the Complaint of the Plaintiff, the Answer, Plea of Justification and the Plea of Laches and Estoppel of the Defendant, the Village of Bridgeview, a Municipal Corporation, the Reply of the Plaintiff to the Plea of Laches and Estoppel and the oral Reply, made in open Court, by the Defendant to the affirmative matter set forth in the said Reply of the Plaintiff; and the parties to the above cause having this day appeared by their respective attorneys and the Court having heard and considered evidence consisting of documentary proofs and testimony of witnesses taken and adduced in open Court and being fully advised in the premises:

(1) That this Court having jurisdiction of the parties hereto and of the subject matter of this cause;

(2) That this Court does hereby find the issues involved in this cause in favor of the Defendant and against the Plaintiff;

(3) That the Defendant, the Village of Bridgeview, a Municipal Corporation, is not guilty of any of the charges made against it in and by the Complaint of the Plaintiff.

WHEREFORE, IT IS ORDERED AND ADJUDGED as follows:

(1) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-3, adopted by the President and Board of Trustees of the Village of Bridgeview on March 16, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on March 17, 1956, as Document No. 16523465, (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "A") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as part of the Village of Bridgeview, Cook County, Illinois.

(2) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-8, adopted by the President and Board of Trustees of the Village of Bridgeview, on June 28, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on June 29, 1956, as Document No. 16625894 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "B") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(3) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance bearing No. 56-9 adopted by the President Board of Trustees of the Village of Bridgeview on June 28, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on June 29, 1956, as Document No. 16625895 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "C") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use, and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(4) That the territory annexed to the Village of Bridgeview, Cook County, Illinois set forth and described in the Ordinance, bearing No. 56-11, adopted by the president and Board of Trustees of the Village of Bridgeview, on July 26, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on July 27, 1956, as Document No. 16651610 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "D") except therefrom that portion of said territory set forth and described in the Disconnection Ordinance No. 58-6, adopted by the Board of Trustees of Village of Bridgeview on June 12, 1958, a copy being recorded in the Recorder's Office of Cook County, Illinois, on June 24, 1958, as Document No. 17243340 (being Plaintiff's Exhibit "W") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(5) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-12, adopted by the President and Board of Trustees of the Village of Bridgeview on July 26, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on July 27, 1956, as Document 16651611 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "E") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(6) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-15, adopted by the President and Board of Trustees of the Village of Bridgeview on September 20, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on September 21, 1956, as Document 16704906 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "F") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that the said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(7) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-16, adopted by the President and Board of Trustees of the Village of Bridgeview on September 20, 1956, a copy thereof being recorded in the

Recorder's Office of Cook County, Illinois, on September 21, 1956 as Document No. 16704907 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "G") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as part of the Village of Bridgeview, Cook County, Illinois.

(8) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-17, adopted by the President and Board of Trustees of the Village of Bridgeview on September 27, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on October 10, 1956, as Document 16723867 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "H") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use, and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(9) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-18, adopted by the President and Board of Trustees of the Village of Bridgeview on November 19, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on November 20, 1956, as Document 16759491 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "I") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village

of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(10) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-19, adopted by the President and Board of Trustees of the Village of Bridgeview on November 19, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on November 20, 1956, as Document No. 16759492 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "J") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(11) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-20, adopted by the President and Board of Trustees of the Village of Bridgeview on November 28, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on November 29, 1956, as Document 16767040 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "K") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(12) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-21, adopted by the President and Board of Trustees of the Village of Bridgeview on November 28, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on November 29, 1956 as Document No. 16767041 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "L") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(13) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-22, adopted by the President and Board of Trustees of the Village of Bridgeview on November 29, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on November 30, 1956, as Document No. 16768172 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "Q") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(14) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-23, adopted by the President and Board of Trustees of the Village of Bridgeview on November 29, 1956, a copy thereof being recorded in the

Recorder's Office of Cook County, Illinois, on November 30, 1956, as Document 16768173 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "R") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(15) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-24, adopted by the President and Board of Trustees of the Village of Bridgeview on November 29, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on November 30, 1956, as Document 16768121 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "M") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(16) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-25, adopted by the President and Board of Trustees of the Village of Bridgeview, on November 29, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on November 30, 1956, as Document No. 16768122 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "N") except therefrom that portion of said territory set forth and described in the Disconnection Ordinance No. 58-7, adopted

by the Board of Trustees of the Village of Bridgeview on June 26, 1958, a copy being recorded in the Recorder's Office of Cook County, Illinois, on July 9, 1958, as Document No. 17255514 (being Plaintiff's Exhibit "X") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(17) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-26, adopted by the President and Board of Trustees of the Village of Bridgeview, on November 29, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on November 30, 1956, as Document No. 16768123 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "O") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(18) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-27, adopted by the President and Board of Trustees of the Village of Bridgeview, on November 29, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on November 30, 1956, as Document 16768124 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "P") except therefrom that portion of said territory set forth

and described in the Disconnection Ordinance known as No. 58-7, adopted by the Board of Trustees of the Village of Bridgeview on June 26, 1958, a copy being recorded in the Recorder's Office of Cook County, Illinois, on July 9, 1958, as Document No. 17255514 (being Plaintiff's Exhibit "X") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(19) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-28, adopted by the President and Board of Trustees of the Village of Bridgeview on December 6, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on December 7, 1956, as Document No. 16775622 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "S") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(20) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-29, adopted by the President and Board of Trustees of the Village of Bridgeview, on December 6, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on December 7, 1956, as Document No. 16775623 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "T") except

therefrom that portion of said territory set forth and described in the Disconnection Ordinance No. 58-6, adopted by the Board of Trustees of the Village of Bridgevew on June 12, 1958, a copy being recorded in the Recorder's Office of Cook County, Illinois, on June 24, 1958, as Document No. 17243346 (being Plaintiff's Exhibit "W") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(21) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 56-30, adopted by the President and Board of Trustees of the Village of Bridgeview on December 6, 1956, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on December 7, 1956, as Document No. 16775624 (being the same Ordinance set forth in Plaintiff's Complaint as Exhibit "U") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(22) That the territory annexed to the Village of Bridgeview, Cook County, Illinois, set forth and described in the Ordinance, bearing No. 57-10, adopted by the President and Board of Trustees of the Village of Bridgeview on June 13, 1957, a copy thereof being recorded in the Recorder's Office of Cook County, Illinois, on June 21, 1957, as Document 16937817 (being the same Ordinance set forth

in Plaintiff's Complaint as Exhibit "V") is a part of and is within the boundaries of the Village of Bridgeview, Cook County, Illinois; and that said Village of Bridgeview, Cook County, Illinois, and the corporate authorities thereof do lawfully possess, hold, use and enjoy powers, rights, authority and jurisdiction over the said territory, and each and every part thereof, as a part of the Village of Bridgeview, Cook County, Illinois.

(23) IT IS FURTHER ORDERED AND ADJUDGED that the Complaint herein be dismissed and that the Defendant, the Village of Bridgeview, a Municipal Corporation, go hence without day and the Plaintiff take nothing by this suit.

(24) IT IS FURTHER ORDERED AND ADJUDGED that the requisite public interest is involved in this cause, which would authorize an appeal, if any, to the Supreme Court of this State.

ENTER:

/s/ DONALD S. MCKINLAY,
Judge.

Dated: 5/9/60

APPENDIX B.

No. 36087

IN THE SUPREME COURT OF ILLINOIS.

PEOPLE OF THE STATE OF ILLINOIS, ex rel. BENJAMIN S. ADAMOWSKI, State's Attorney of Cook County, Illinois, *Plaintiff-Appellant,* *vs.* VILLAGE OF BRIDGEVIEW, a Municipal Corporation, *Defendant-Appellee.*	Appeal from the Superior Court of Cook County, Illinois. — Honorable DONALD S. MCKINLAY, *Judge Presiding.*

ORDER.

This matter coming on to be heard on the motion of Clearing Realty Sales, Inc., by Feinberg and Fried and Kirkland, Ellis, Hodson, Chaffetz & Masters, its attorneys, to dismiss the pending appeal in the above case or to advance said cause for immediate determination;

IT IS HEREBY ORDERED that said motion is continued, to be passed upon by the Illinois Supreme Court in session.

ENTER:

/s/ WALTER V. SCHAEFER,
Judge of the Supreme Court of Illinois.

Dated: Jan. 6, 1961.

APPENDIX C.

No. 36087

UNITED STATES OF AMERICA.

STATE OF ILLINOIS } ss.
SUPREME COURT }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of January in the year of our Lord, one thousand nine hunderd and sixty-one, within and for the State of Illinois.

Present: WALTER V. SCHAEFER, *Chief Justice,*

Justice JOSEPH E. DAILY,

Justice HARRY B. HERSHEY,

Justice BYRON O. HOUSE,

Justice GEORGE W. BRISTOW,

Justice RAY I. KLINGBIEL,

Justice ROY J. SOLFISBURG, JR.,

WILLIAM G. CLARK, *Attorney General,*

ROBERT G. MILEY, *Marshal,*

Attest: MRS. EARLE BENJAMIN SEARCY, *Clerk.*

BE IT REMEMBERED, that, to-wit, on the 16th day of January, A. D. 1961, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

PEOPLE ex rel. BENJAMIN S. ADAMOWSKI, State's Attorney of Cook County,
Appellant,
vs.
THE VILLAGE OF BRIDGEVIEW, a Municipal Corporation,
Appellee.

Appeal from Superior Court Cook County. 59 S 20597

And now, on this day, the Court having duly considered the motion by Clearing Realty Sales, Inc., to dismiss this appeal, or to advance cause for immediate determination, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by Clearing Realty Sales, Inc., to dismiss this appeal, or to advance cause for immediate determination be, and the same is, denied.

I, Justin Taft, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 19th day of November, A. D. 1969.

/s/ JUSTIN TAFT,
Clerk, Supreme Court of the State of Illinois.

APPENDIX D.

No. 36087

IN THE SUPREME COURT OF ILLINOIS.

PEOPLE OF THE STATE OF ILLINOIS, ex rel. BENJAMIN S. ADAMOWSKI, State's Attorney of Cook County, *Plaintiff-Appellant,* *vs.* VILLAGE OF BRIDGEVIEW, a Municipal Corporation, *Defendant-Appellee.*	Appeal from the Superior Court of Cook County, Illinois. — Honorable DONALD S. McKINLAY, *Judge Presiding.*

ORDER.

This matter coming on to be heard on motion of Clearing Realty Sales, Inc., to dismiss appeal or advance cause for immediate determination, which motion is supported by affidavits and suggestions.

IT IS ORDERED that said Motion and Affidavits and Suggestions in support thereof be filed with the Clerk of the Supreme Court of Illinois, to be passed upon by this Court.

/s/ WALTER V. SCHAEFER,
Justice of the Supreme Court.

Dated: February 24, 1961.

APPENDIX E.

No. 36087

STATE OF ILLINOIS } ss.
SUPREME COURT }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of March in the year of our Lord, one thousand nine hundred and sixty-one, within and for the State of Illinois.

Present: WALTER V. SCHAEFER, *Chief Justice,*
Justice JOSEPH E. DAILY,
Justice HARRY B. HERSHEY,
Justice BYRON O. HOUSE,
Justice GEORGE W. BRISTOW,
Justice RAY I. KLINGBIEL,
Justice ROY J. SOLFISBURG, JR.,
WILLIAM G. CLARK, *Attorney General,*
ROBERT G. MILEY, *Marshal,*
Attest: MRS. EARLE BENJAMIN SEARCY, *Clerk.*

BE IT REMEMBERED, that, to-wit: on the 14th day of March, A. D. 1961, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

PEOPLE ex rel. BENJAMIN S. ADAMOWSKI, State's Attorney of Cook County,
Appellant,
vs.
THE VILLAGE OF BRIDGEVIEW, a Municipal Corporation,
Appellee.

Appeal from Superior Court Cook County. 59 S 20597

And now, on this day, the Court having duly considered the motion by Clearing Realty Sales, Inc., to dismiss this appeal, or to advance cause for immediate determination, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by Clearing Realty Sales, Inc., to dismiss this appeal, or to advance cause for immediate determination be, and the same is allowed and the appeal dismissed.

I, Justin Taft, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 19th day of November, A. D. 1969.

/s/ JUSTIN TAFT,
Clerk, Supreme Court of the State of Illinois.

APPENDIX F.

STATE OF ILLINOIS }
SUPREME COURT } ss.

IN THE CIRCUIT COURT OF COOK COUNTY,
County Department, Law Division.

VILLAGE OF BRIDGEVIEW, a Municipal Corporation,
Plaintiff,
vs.
CITY OF HICKORY HILLS, a Municipal Corporation,
Defendant.

No. 69 L 14161
Consolidated with
No. 69 L 14938.

JUDGMENT ORDER.

This cause having come on to be heard upon the Complaint, as amended, for ejectment, declaratory judgment and equitable relief, brought by the Village of Bridgeview against the City of Hickory Hills, in cause No. 69 L 14161, and upon the Complaint for mandamus in cause No. 69 L 14938, brought by Walter Frech and Irene Frech, William Cazeau and Marlene Cazeau, Joseph Salecki and Ruth Salecki, Robert Bily and Beverly Bily, Louis Bulger and Edna Bulger and Archer Realty Company, Inc. an Illinois corporation, residents on South 77th Avenue between 9103 and 9253, seeking an order directing the Village to provide these plaintiffs with a satisfactory water supply, an adequate sewerage disposal system, an adequate police and fire protection, and for damages. The two cases were consolidated, and the Court, having heard evidence, considered the briefs and arguments of the parties, and being fully

advised in the premises, rendered an oral opinion on March 19, 1970, setting forth the basis for this Court's ruling, which Report of Proceedings is being filed concurrently with this Order and incorporated herein by reference:

IT IS THEREFORE ORDERED, ADJUDGED, DECLARED AND DECREED AS FOLLOWS:

1. The question of municipal jurisdiction of the subject property is res adjudicata under the decision of Judge Donald McKinlay, in case No. 59 S 20597, in the Superior Court of Cook County, Illinois, and the properties in question between 9103 and 9255 South 77th Avenue, and the public street known as South 77th Avenue at that location, are and have, since November 30, 1956, been under the jurisdiction of the Village of Bridgeview.

2. The water and sewer lines installed by the City of Hickory Hills in the said South 77th Avenue at the said location, constitute a continuing trespass by the City of Hickory Hills.

3. The prayer by the Village of Bridgeview for an order of ejectment from the said 77th Avenue against the City of Hickory Hills, and a mandatory injunction requiring the City to remove the said sewer and water lines be, and is, hereby denied on the grounds of laches and other general principles of equity.

4. The City of Hickory Hills, its officers and agents are hereby ordered to allow the plaintiffs-property owners in cause No. 69 L 14938, and their successors and assigns to connect their aforesaid properties to the sanitary sewers and water mains installed in the said 77th Avenue, subject to payment of the customary connection fee to Hickory Hills, and to supply sewer and water services to the aforesaid residents at the same price or charge that the City of Hickory Hills collects from consumers within its limits. The meter charges therefor shall be billed to the Village of

Bridgeview which shall remit to the City of Hickory Hills, within fifteen (15) days and, in turn, bill and collect for same from the individual property owners.

5. The connections referred to in paragraph 4, shall be by a licensed plumber and the Village of Bridgeview shall, at its expense, make the connection from the said sewers to the individual property lines along said South 77th Avenue. The connection from the individual residences to the Village's extension shall be at the expense of the property owners. Twenty-four (24) hours' notice shall be given to the City of Hickory Hills and to the Village of Bridgeview, before any proposed connections shall be made.

The water so to be furnished as aforesaid, shall be furnished and measured by a reliable water meter of the type satisfactory to the City of Hickory Hills. The individual property owners shall pay the customary charge for said meter. The care, control and maintenance of said meter shall be under the control of the Village of Bridgeview, subject however, to the inspection by the City of Hickory Hills, at all reasonable times.

6. The Village of Bridgeview be, and is, ordered to deliver an easement providing for the installation and maintenance of sewer and water lines upon connection of the aforesaid property owners to such sewer and water lines.

7. The prayer for a writ of mandamus in Count I in cause No. 69 L 14938 be, and is, hereby denied and the said cause of action in Count I be, and is, hereby dismissed with prejudice. On the claim for damages in Count II of cause No. 69 L 14938, the Court finds in favor of the defendant, Village of Bridgeview, and against the said plaintiffs in said cause and, accordingly, judgment in Count II of said cause No. 69 L 14938, be, and is, entered in favor of defendant, Village of Bridgeview, and against said plaintiffs, that

said plaintiffs take nothing by said Count II, and defendant, Village of Bridgeview, go hence without day.

8. The costs herein shall be borne by each of the respective parties to this lawsuit. The Court retains jurisdiction solely for the purpose of enforcing the terms of this Order.

ENTER:

EDWARD J. EGAN,
Judge of the Circuit Court.

Dated: March 20, 1970.

APPENDIX G.

No. 54923

VILLAGE OF BRIDGEVIEW,
a municipal corporation,
Plaintiff-Appellee,
vs.
CITY OF HICKORY HILLS,
a municipal corporation,
Defendant-Appellant,
and
WALTER FRECH, et al.,
Plaintiffs-Appellees,
vs.
VILLAGE OF BRIDGEVIEW,
a municipal corporation,
Defendant-Appellee.

Appeal from the Circuit Court of Cook County.

Honorable Edward J. Egan, Presiding.

MR. JUSTICE SCHWARTZ delivered the opinion of the court:

This case involves a dispute between the Village of Bridgeview and the City of Hickory Hills as to municipal jurisdiction over a street known as South 77th Avenue. Bridgeview filed suit for ejectment and other relief, seeking to require Hickory Hills either to remove certain sanitary sewers and water mains from 77th Avenue or to supply sewer and water service to properties on the east side of 77th Avenue which it is alleged is within the corporate limits of Bridgeview. This suit was consolidated with a mandamus action brought against Bridgeview by owners of the property along 77th Avenue. At the conclusion of all the evidence the court on March 20, 1970 held that South 77th Avenue was within the municipal boundaries of the Village of Bridgeview and that the City of Hickory Hills, by virtue of its installation of sewer and water mains

thereon, was a trespasser. The court thereupon ordered Hickory Hills to allow property owners on the east side of South 77th Avenue the use of its sewer and water facilities upon the payment of charges therefor by Bridgeview. The prayer for a writ of mandamus was denied and no appeal was taken by the property owners.

On appeal Hickory Hills contends that the trial court erred in holding (1) that a judgment entered in a 1950 quo warranto proceeding upholding Bridgeview's annexation of the disputed area is res judicata on the issue of municipal jurisdiction and in holding (2) that the installation of water and sewer lines by Hickory Hills along 77th Avenue constituted a continuing trespass on property located within the Village of Bridgeview, and (3) that the Bridgeview annexations of the territory are void and unenforceable because they do not meet the essential requirement of substantial contiguity. The facts follow.

In 1956 Bridgeview passed several ordinances annexing that portion of 77th Avenue here involved and other unincorporated areas. In 1957 a group of property owners filed a petition in the County Court of Cook County for the annexation to the City of Hickory Hills of certain allegedly unincorporated areas, including the same section of 77th Avenue before referred to. Upon a hearing the County Court found that "said territory is not within the corporate limits of any City, Village or Municipality * * *" and ordered Hickory Hills to consider the annexation. Shortly thereafter Hickory Hills passed an ordinance purporting to annex that territory. In 1959 the State's Attorney of Cook County instituted a quo warranto proceeding in the Superior Court of Cook County challenging the Bridgeview annexation ordinances passed in 1956. The Superior Court of Cook County ruled in favor of Bridgeview and upheld the annexations, including the annexation of South 77th

Avenue. A direct appeal by the State's Attorney to the Supreme Court of Illinois was dismissed on March 1, 1961 as "not well taken."

In 1960 Hickory Hills installed sewer lines and in 1963 it installed water mains along 77th Avenue. Bridgeview's action for ejectment and other relief was filed in 1969. Subsequently a group of property owners on 77th Avenue brought a mandamus action against Bridgeview seeking to compel the Village to supply them with water and sewer service. As hereinbefore stated, the ejectment and mandamus actions were consolidated for trial. The trial court held that the issue of municipal jurisdiction over the disputed area had been adjudicated in the 1959 quo warranto proceeding and that this was res judicata. The trial court concluded that Hickory Hills was a trespasser but denied ejectment on the ground of laches and "other general principles of equity." The court ordered Hickory Hills to allow the property owners on 77th Avenue to hook into the sewer and water lines upon the payment by Bridgeview of the charges for such services.

It is contended by the City of Hickory Hills that the trial court improperly invoked the doctrine of res judicata since the parties in interest and the issues involved differ from those involved in the earlier quo warranto proceeding. We find no merit in that contention. The statute provides that in quo warranto proceedings, "The People of the State of Illinois shall be deemed the plaintiff * * *" (Ill. Rev. Stat. 1969, ch. 112, par. 11) and it has been held repeatedly that the legality of proceedings by which additional territory is added to a municipality *cannot be inquired into* except upon a direct proceeding by quo warranto. *People* v. *McKinnie,* 277 Ill. 342, 115 N. E. 526; *People* v. *York,* 247 Ill. 591, 93 N. E. 400; *Ogle* v. *City of Belleville,* 238 Ill. 389, 87 N. E. 353; *Edgewood Park # 2 Home. Ass'n.* v. *Countryside Sanitary Dist.,* 96 Ill. App. 2d 161, 237 N. E. 2d 838,

aff'd. in 42 Ill. 2d 241; *In Re Petition to Village of Arlington Heights,* 65 Ill. App. 2d 152, 212 N. E. 2d 507.

In the instant case the property in question was annexed by Bridgeview in 1956. The annexation was upheld in a subsequent quo warranto proceeding instituted by the State's Attorney of Cook County on behalf of the People of the State of Illinois. Accordingly the fact that the County Court made findings in 1957 which appear to be inconsistent with the validity of Bridgeview's 1956 annexation ordinance is of no significance, since the court lacked jurisdiction to determine the legality of the Bridgeview annexation. *People* v. *McKinnie, supra.* Under the doctrine of res judicata the quo warranto proceeding upholding the Bridgeview annexations is dispositive of the question of municipal jurisdiction over the disputed area in the case now before us. Since we sustain the trial court's finding that South 77th Avenue is a part of the Village of Bridgeview, the contention that the trial court erred in finding Hickory Hills a trespasser is without merit.

As to the third contention made by Hickory Hills, that the territory annexed by Bridgeview is not contiguous to the Village, that issue as well as all other issues relating to the validity of the annexation was disposed of in the quo warranto proceeding. The judgment is accordingly affirmed.

JUDGMENT AFFIRMED.

BURMAN and DIERINGER, *J. J.* concur.

9-15-71.

APPENDIX H.

No. 44798

UNITED STATES OF AMERICA.

STATE OF ILLINOIS } ss.
SUPREME COURT }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the tenth day of January in the year of our Lord, one thousand nine hundred and seventy-two, within and for the State of Illinois.

Present: ROBERT C. UNDERWOOD, *Chief Justice*,

Justice WALTER V. SCHAEFER,

Justice DANIEL P. WARD,

Justice JOSEPH H. GOLDENHERSH,

Justice THOMAS E. KLUCZYNSKI,

Justice CHARLES H. DAVIS,

Justice HOWARD C. RYAN,

WILLIAM J. SCOTT, *Attorney General*,

ROBERT G. MILEY, *Marshal*,

ATTEST: JUSTIN TAFT, *Clerk*.

BE IT REMEMBERED, that, to-wit, on the 26th day of January 1972, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

VILLAGE OF BRIDGEVIEW, a municipal corporation, *Respondent*, *vs.* CITY OF HICKORY HILLS, a municipal corporation, *Petitioner*, WALTER FRECH, et al.	Petition for Leave to Appeal from Appellate Court First District. No. 54923

And now on this day the Court having duly considered the Petition for Leave to Appeal herein and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondent recover of and from the said Petitioner costs by it in this behalf expended, to be taxed, in due course of law.

I, Justin Taft, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 17th day of February, 1972.

(SEAL)

/s/ JUSTIN TAFT,
Clerk, Supreme Court of the State of Illinois.

SUPREME COURT, U. S.

FILED

JUN 2 1972

MICHAEL RODAK, JR., CLERK

No. 71-1375

In the

Supreme Court of the United States

OCTOBER TERM, 1971

CITY OF HICKORY HILLS, ILLINOIS, a municipal corporation,

Petitioner,

vs.

THE VILLAGE OF BRIDGEVIEW, ILLINOIS, a municipal corporation, EDWARD V. HANRAHAN, State's Attorney of Cook County, Illinois, WALTER FRECH, IRENE FRECH, WILLIAM CAZEAU, MARLENE CAZEAU, JOSEPH SALECKI, RUTH SALECKI, ROBERT BILY, BEVERLY BILY, LOUIS BULGER, EDNA BULGER, ARCHER REALTY COMPANY, INC., an Illinois corporation, and TERMINAL CITY CORPORATION, formerly known as CLEARING REALTY SALES, INC., an Illinois corporation,

Respondents.

ANSWER OF THE VILLAGE OF BRIDGEVIEW, ILLINOIS, TO THE PETITION FOR WRIT OF CERTIORARI FILED BY THE CITY OF HICKORY HILLS, ILLINOIS

LOUIS ANCEL
MARVIN J. GLINK
RONALD M. GLINK
111 West Washington Street
Chicago, Illinois 60602
Attorneys for Respondent
Village of Bridgeview, Illinois,
a Municipal Corporation

RONALD M. GLINK
Of Counsel

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-1375

CITY OF HICKORY HILLS, ILLINOIS, a municipal corporation,

Petitioner,

vs.

THE VILLAGE OF BRIDGEVIEW, ILLINOIS, a municipal corporation, EDWARD V. HANRAHAN, State's Attorney of Cook County, Illinois, WALTER FRECH, IRENE FRECH, WILLIAM CAZEAU, MARLENE CAZEAU, JOSEPH SALECKI, RUTH SALECKI, ROBERT BILY, BEVERLY BILY, LOUIS BULGER, EDNA BULGER, ARCHER REALTY COMPANY, INC., an Illinois corporation, and TERMINAL CITY CORPORATION, formerly known as CLEARING REALTY SALES, INC., an Illinois corporation,

Respondents.

ANSWER OF THE VILLAGE OF BRIDGEVIEW, ILLINOIS, TO THE PETITION FOR WRIT OF CERTIORARI FILED BY THE CITY OF HICKORY HILLS, ILLINOIS

The respondent Village of Bridgeview, Illinois, a municipal corporation, prays that the Petition for Writ of Certiorari filed by the Petitioner City of Hickory Hills, Illinois, a municipal corporation, be denied, and in support thereof, submits the following suggestions.

REASONS WHY THE PETITION FOR CERTIORARI SHOULD BE DENIED

I.

This Court has no jurisdiction to grant a Petition for Certiorari to review a final judgment of the Supreme Court of Illinois in effect for more than ten years;

II. The contention that petitioner was deprived of due process is a spurious issue, which was not properly raised in the Illinois Trial or Appellate Courts.

III. It would be against the public interest and would not serve any good purpose to overturn the annexation of territory in effect for fifteen years, a quo warranto judgment in effect for twelve years, and a judgment of the Supreme Court of Illinois in effect for ten years.

COMMENTS ON PETITIONER'S STATEMENT OF FACTS

The caption and the petition erroneously combine the parties and court records from two separate and independent actions decided more than ten year apart from one another. The Village of Bridgeview, the City of Hickory Hills, Walter and Irene Frech, William and Marlene Cazeau, Joseph and Ruth Salecki, Robert and Beverly Bily, Louis and Edna Bulger and Archer Realty Company, Inc. were parties to the consolidated action for ejectment declaratory judgment and equitable relief brought by the Village of Bridgeview against the City of Hickory Hills which is the subject matter of the opinion by the Appellate Court of Illinois on September 15, 1971, leave to appeal denied by the Supreme Court of Illinois on January 26, 1972 (*Village of Bridgeview* v. *City of Hickory Hills, et al.*, 1 Ill. App. 3rd 931, 274 N.E. 2d 925).

The State's Attorney of Cook County, Illinois, Terminal City Corporation, formerly known as Clearing Realty Sales, Inc. and the Village of Bridgeview, Illinois, were involved in the 1959 Quo Warranto proceedings instituted in the Superior Court of Cook County (59S 20597) finally determined by order of the Supreme Court of Illinois dismissing that appeal on March 14, 1961 (People ex rel Benjamin S. Adamowski, State's Attorney of Cook County v. Village of Bridgeview, et al., Docket No. 36087) and these parties and the records in that case are not properly before this Court.

The pertinent facts we submit are correctly stated in the Appellate Court opinion. (Pet. App. G). As to the statement that "The judgment order of the Circuit Court and the opinion of the Appellate Court were silent as to the questions raised by the City of Hickory Hills concerning the denial of due process of law as guaranteed by the Illinois Constitution and the United States Constitution" (Petition Page 8), it should be noted that petitioner's claim was not properly raised or considered in either the Trial or Appellate Courts. (See Argument, Point II).

ARGUMENT

I.

By the terms of 28 U.S.C. Section 2101(C), a Writ of Certiorari intended to bring a judgment in a State Court civil action, before the Supreme Court of the United States for review must be applied for within ninety days after the entry of the judgment. Here, the decision of the Supreme Court of the State of Illinois on March 14, 1961 to dismiss the Quo Warranto appeal in Docket No. 36087 finally disposed of all issues in that case. That decision has remained in effect, undisturbed, for more than a decade and this Court's jurisdiction cannot now be invoked by the City of Hickory Hills' stale Petition for Certiorari filed herein. See *Cole* v. *Violette,* 319 U.S. 581; *Bomer* v. *Tennessee,* 318 U.S. 711; *Hartford Accident Co.* v. *Bunn,* 285 U.S. 169.

II.

The petitioner's claim of a constitutional denial of due process was not properly raised or considered by the Illinois Trial and Appellate Court and under settled principles cannot be considered for the first time on appeal. See *Continental Paper Grading Co.* v. *Fisher,* 1 Ill. 2d 37; *Cahill* v. *Plumbers Gas and Steam Fitters and Helpers Local 93,* 315 Ill. 211; *Pennsylvania R. Co.* v. *Illinois Brick Co.,* 297 U.S. 477; reh. den. 297 U.S. 728; *Hague* v. *C.I.O.,* 307 U.S. 496.

The answer filed by the City of Hickory Hills to the amended complaint in the Circuit Court made no mention of its constitutional claim. Nor did it attempt to add the parties to the Quo Warranto proceeding as additional

parties to this suit brought by the Village of Bridgeview. The motions and affidavits which petitioners herein contend were improperly filed in the Illinois Supreme Court in the 1961 Quo Warranto proceedings were never introduced in evidence or called to the Trial Court's attention and were never even submitted to the Appellate Court.

The issues as stated in petitioner's brief in the Appellate Court also omit mention of the constitutional claim of procedural due process. Petitioner there stated the issues as follows:

"ISSUES PRESENTED

"I. Whether, as a defense to a complaint for ejectment, an attack on the municipal jurisdiction of the complainant is barred by a judgment in a prior quo warranto proceeding not involving the same parties or the same issues, under the doctrine of res judicata.

II. Whether prior 'annexations' by a municipality which are substantially defective in law prevent property-owner, resident electors from petitioning the court and being lawfully annexed to another municipality."

The issue not having been properly raised below, it cannot, we submit, form the basis for the granting of a petition for Writ of Certiorari.

The claim of a denial of due process is also substantively defective. Under Illinois Law, a municipal corporation is a creature of the State and may be divided, altered, enlarged or abolished as the legislative judgment and public welfare may require. See *The People* v. *Cowan,* 283 Ill. 308, 314; *The People* v. *Wood,* 411 Ill. 514, 522. As such, it is not protected by the due process guaranty of the Fourteenth Amendment against State action. See 16 Am. Jur.2d Constitutional Law, Section 559, pp. 961,

962; *Hunter* v. *City of Pittsburgh,* 207 U.S. 161; *Deane Hill Country Club, Inc.* v. *City of Knoxville,* 379 F.2d 321, 325 (6th Cir. 1967).

Moreover, petitioner's argument is spurious. It baldly contends that by permitting "the stranger" to enter the cause at the Appellate level, petitioner's due process rights were denied. But, the motion to dismiss the appeal with supporting brief was duly presented to the Illinois Supreme Court and served upon the State's Attorney of Cook County. The State's Attorney represented the people of the State of Illinois, including the petitioner herein, and had complete control over the Quo Warranto proceedings as to whether the appeal would be prosecuted or dismissed. See *The People* v. *Wood,* 411 Ill. 514, 522. He had more than adequate time to file a response if he chose to do so. The fact that he did not do so, does not constitute a denial of procedural due process or destroy the validity of an order entered in such an appeal.

Moreover, the Illinois Supreme Court had ample authority under former section 92 to allow new parties to be added and "give any judgment and make any order that ought to have been given or made." This includes the dismissal of an appeal for the reasons specified in the motion or even on that Court's own motion. See Nichols Illinois Civil Practice Act, Vol. 6, Section 6340, p. 432; *LaSalle National Bank, et al.* v. *City of Chicago,* 3 Ill. 2d 375; *City of Highland Park* v. *Gail,* 276 Ill. 24, 26. Certainly this is true of a Quo Warranto proceeding where the court has the power to deny the remedy on the basis of laches or "where the rendition of a judgment of ouster would not be in the public interest, or serve any good end or purpose." *People* v. *Wilson,* 20 Ill. 2d 568, 578-579. *People ex rel. Lindsey* v. *Board of Education,* 3 Ill. 2d 159, 168.

Moreover, even if we assume an error in dismissing the 1961 appeal, which we do not, still petitioner has failed to prove a due process violation. An appellate review is not a requirement of due process even in criminal cases. *Griffen* v. *Illinois,* 351 U.S. 12, 18. To be valid a judgment need not be free from error. If whenever a judgment were called in question, the Court in the proceeding would review the matter previously adjudged to determine whether there had been error, a judgment would have no finality. Immortal litigation would overcome mortal man, and the sound principle of fundamental repose which underlies *res judicata* would be subverted. *United States* v. *Throckmorton,* 98 U.S. 61 (1878).

III.

To accept petitioner's arguments would render uncertain municipal annexation questions long since decided and open the door to the specious kind of attacks being raised in the case at bar. For example, relying principally upon documents which were never introduced in evidence, petitioners ask this Court to overturn annexations in effect for fifteen years, a Quo Warranto judgment in effect for twelve years which was based upon extensive pleadings and evidence, and in addition, to overturn the Illinois Supreme Court's decision to dismiss an appeal from that decision, in effect for ten years. These arguments are advanced without any explanation for a ten-year hiatus, and notwithstanding the fact that Joseph McGaw, the attorney for the City of Hickory Hills, signed an affidavit in 1961 which was submitted to the Illinois Supreme Court in support of the very motion to dismiss the Quo Warranto appeal which petitioner is now attacking.

These arguments also ignore the Bridgeview Answer and Plea in the 1959 *Quo Warranto* action (introduced by

Hickory Hills as Exhibit No. 4) (R.P. 160) which contained 7 pages of reasons why the doctrine of laches and estoppel barred the State's Attorney's *Quo Warranto* action in 1959. (Defendant's Exhibit 4, pp. 31-37). How much more compelling are such defenses after the passage of another ten years? Moreover, the arguments overlook the testimony of the engineer for Bridgeview that a special assessment for sewer and water lines is presently under way from Harlem Avenue to 83rd Street south to 95th Street, which will pick up and service the truck terminal property along with other properties. (RP 86), and the fact that Hickory Hills entered into a water and sewer contract with Bridgeview on March 31, 1964 which specifically in paragraph 2 recognized a portion of the territory now under attack as being a part of the Village of Bridgeview. (Ex. 2 to Amended Complaint, RC 68; RP 86, 87, 89, 90, 127).

We submit that the Illinois Appellate and Supreme Courts properly avoided a rehash of all the issues involved in the 1959 *Quo Warranto* proceedings and correctly ruled that the question of jurisdiction over south 77th Avenue was *res judicata* under said decision. As noted in *The People* v. *Wood*, 411 Ill. 514, 525:

> "The rules and limitations of *quo warranto*, which preclude appellant's right to review, are well justified when it is considered that the vesting of the power to *institute, dismiss or appeal a quo warranto* proceeding in the Attorney General or State's Attorney, where purely public rights are concerned, avoids the confusion and conflict which would occur if others could interfere at some state of the proceeding, or if concurrent control of the *quo warranto* remedy was to vest in other hands. Rules and principles evolved for, and having the effect of avoiding conflicts and in elim-

inating possible disputes between State officers and State entities in *quo warranto* actions, are founded upon practical considerations which should not be lightly overturned." (Emphasis added)

CONCLUSION

Based upon the foregoing, respondent, Village of Bridgeview, Illinois submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

LOUIS ANCEL
MARVIN J. GLINK
RONALD M. GLINK
Attorneys for Respondent,
Village of Bridgeview, Illinois,
a Municipal Corporation.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-1375

CITY OF HICKORY HILLS, ILLINOIS, A MUNICIPAL CORPORATION,

Petitioner,

vs.

THE VILLAGE OF BRIDGEVIEW, ILLINOIS, A MUNICIPAL CORPORATION, EDWARD V. HANRAHAN, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS, WALTER FRECH, IRENE FRECH, WILLIAM CAZEAU, MARLENE CAZEAU, JOSEPH SALECKI, RUTH SALECKI, ROBERT BILY, BEVERLY BILY, LOUIS BULGER, EDNA BULGER, ARCHER REALTY COMPANY, INC., AN ILLINOIS CORPORATION, AND TERMINAL CITY CORPORATION, FORMERLY KNOWN AS CLEARING REALTY SALES, INC., AN ILLINOIS CORPORATION,

Respondents.

REPLY TO ANSWER OF THE VILLAGE OF BRIDGEVIEW, ILLINOIS, TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT, JOINTLY OR IN THE ALTERNATIVE.

JOSEPH J. KOZLOWSKI,
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Of Counsel:
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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-1375.

CITY OF HICKORY HILLS, ILLINOIS, A MUNICIPAL CORPORATION,

Petitioner,

vs.

THE VILLAGE OF BRIDGEVIEW, ILLINOIS, A MUNICIPAL CORPORATION, EDWARD V. HANRAHAN, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS, WALTER FRECH, IRENE FRECH, WILLIAM CAZEAU, MARLENE CAZEAU, JOSEPH SALECKI, RUTH SALECKI, ROBERT BILY, BEVERLY BILY, LOUIS BULGER, EDNA BULGER, ARCHER REALTY COMPANY, INC., AN ILLINOIS CORPORATION, AND TERMINAL CITY CORPORATION, FORMERLY KNOWN AS CLEARING REALTY SALES, INC., AN ILLINOIS CORPORATION,

Respondents.

REPLY TO ANSWER OF THE VILLAGE OF BRIDGEVIEW, ILLINOIS, TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT, JOINTLY OR IN THE ALTERNATIVE.

This court has jurisdiction to entertain this Petition for a Writ of Certiorari pursuant to both 28 U. S. C. § 1257(3) and 28 U. S. C. § 2101(c) because this is an appeal taken within 90 days from the entry of an order of the Illinois Supreme Court denying a prayer to vacate a judgment of dismissal in Docket 36087 in 1961 and leave to appeal in docket 44798 in 1972.

The petitioner, City of Hickory Hills, prayed:

> "Defendant-Petitioner the City of Hickory Hills, . . . prays that, upon review by this Court, the judgments of the Appellate Court and the Circuit Court be reversed, and that the cause be remanded to the Circuit Court with directions to enter a judgment in favor of defendant; *and further, that the order entered by this Court on the 14th Day of March, 1961 dismissing the appeal in People ex rel. Benjamin S. Adamowski, State's Attorney of Cook County, Appellant* v. *The Village of Bridgeview, a Municipal Corporation, Appellee, Docket No. 36087, be vacated.*" [Emphasis added.] (Pages 1 and 2, Petition for Leave to Appeal, Docket No. 44798, Item No. 11 in the Index of Documents Transmitted to the Supreme Court of the United States.)

The Supreme Court of Illinois (Appendix H, page A28) on January 26, 1972, ruled:

> And now on this day the Court having duly considered the Petition for Leave to Appeal herein and being now fully advised of and concerning the premises, *doth overrule the prayer of the petition and denies Leave to Appeal herein.* [Emphasis added.]

Section 2101(c) clearly states that "any judgment or decree in a civil action, suit or proceeding" shall be brought within 90 days, and there can be no question that the foregoing prayer and denial falls within the meaning of Section 2101(c). Throughout the trial and appellate proceedings it was charged that the Order of March 14, 1961, of the Illinois Supreme Court was void, and that the void order could not be the basis for a *res judicata* decision. The determination of the issues in Docket 36087 on the merits was necessary and was indivisible from a determination on the merits in the Illinois Appellate Court Docket 54923. The Respondent states that the parties and record in Docket 36087 are not properly before this Court, yet without that record, a proper determination cannot be

made. The January 26, 1972, order of the Illinois Supreme Court was a final one affecting both cases; therefore this court has jurisdiction of docket 36087 under the provisions of 28 U. S. C. § 2101(c).

Supreme Court Rule 23(5) provides that a single petition for a writ of certiorari shall suffice for all cases where both cases involve closely related questions, as in the instant case. The rule does not necessarily preclude review of interrelated cases which might span a decade, if the determination of one is contingent upon the determination of the other. The rule is not self-restrictive to contemporary and concurrent cases involving diverse parties where the differences between the cases are unsubstantial. The rule has equal application to the instant case. Historically this Court has charted new courses of law and Rule 23(5) is a proper vehicle herein.

Your petitioner further suggests that this writ of certiorari may be directed at both the Illinois Supreme Court and the Illinois Appellate Court jointly or in the alternative. While this may seen unique, the petitioner suggests it is a proper course herein. If the Illinois Appellate Court is bound by the order of dismissal of the Illinois Supreme Court insofar as the Appellate Court deems it necessary to the disposition of Docket 54923, then a joint or alternative writ to the Illinois Supreme Court is required for a determination of Docket 36087 (the 1961 case) and ultimately Docket 44789.

Moreover, notwithstanding the fact that the instant case falls within the scope of Section 2101(c), insofar as a "statutory writ of certiorari" can be directed to the Illinois Supreme Court, this Court has the authority and jurisdiction under 28 U. S. C. § 1651(a) to issue a "common-law writ of certiorari." The authority of the Supreme Court to issue a writ of certiorari and to examine the proceedings of an inferior court so far as may be necessary to ascertain

whether that court has exceeded its jurisdiction and authority is no longer open to question. When the circumstances demand it, the Writ may be allowed by the Supreme Court, as at common-law, to correct excesses of jurisdiction and in the furtherance of justice. Your petitioners have filed the certified record of Docket 36087 with the Clerk of this Court and all the requirements to entertain a petition for the extraordinary Writ or common-law writ have been substantially complied with except for a formal and separate motion for leave to file a petition for the writ.

We respectfully suggest that when a writ of certiorari issues, it does not bear a label indicating that it is a "statutory writ" or a "common-law writ." A writ is a writ, notwithstanding any niceties of distinction which may be read into or crop up in the statutes according to various interpretations. The Hickory Hills petition clearly demonstrates that the Illinois Supreme Court acted in excess of its jurisdiction. The interests of justice are best served when the integrity of our judicial system is maintained and principles of law and order are preserved. When a substantial federal question arises, as in the instant case, we respectfully submit that this Court should exercise its jurisdiction.

The respondent's suggestion that the petitioner, being merely a creature of the State and as such is not protected by the due process guaranty of the Fourteenth Amendment against State action belies what we believe to be the true essence of due process. Certainly any municipal corporation, or even a political subdivision, may be divided, altered, enlarged, or abolished as a state may dictate insofar as its boundaries or area is concerned. But so long as that municipal corporation exists, it must be entitled to the same rights and privileges as any other party before the courts. This is not a question of enlargement or diminishment of territory, but is a question of judicial standing before the courts. If a municipal corporation

is not protected against an abuse of the due process guaranty, under the Fourteenth Amendment to the United States Constitution, can it even have standing to sue or be sued? We suggest that whenever any court secures jurisdiction over a party, be that party a municipal corporation or not, then the due process guaranty attaches for all purposes.

The respondent suggests that we have raised the constitutional question for the first time on appellate level. Yet the question was briefed in the trial court and argued in the Appellate Court. The question was placed before the Illinois Supreme Court in the Petition for Leave to Appeal. Difficult of precise definition, a question involving due process by its very nature can arise at any stage of the proceedings.

Notwithstanding whether the question was raised in the inferior courts, and the petitioner takes the position that the Question was properly raised in every stage of the proceedings, we suggest that the Illinois Supreme Court itself by denying the Petition for Leave to Appeal acted in a manner so as to deny due process.

Noting the effect to the Order of Dismissal in docket 36087, during oral argument the Appellate Court asked counsel for the petitioner if he would have that court overrule the Illinois Supreme Court. It had always been suggested by the petitioner that the challenged Supreme Court order was void, therefore the Appellate Court could decide conflicting decisions of concurrent trial courts on the merits. An adverse decision by the Appellate Court generated the Petition for Leave to Appeal to the Illinois Supreme Court in order that it might correct the anamolous situation. By its subsequent action, the Supreme Court of Illinois in refusing to vacate its void order denied the petitioner due process, and the issue was joined.

We agree that sound principles underlie *res judicata*, but we suggest that due process requires judicial review of procedures and circumstances where there has been a misapplication of the principle, as in the instant case. This does not cause immortal litigation, for without a proper review, there might well be endless litigation. The respondent attempts to skirt the fundamental issue by describing the instant case as a specious attack on purported annexations allegedly in effect for fifteen years on the premise that to render an adjudication on the merits would not be in the public interest. We submit that on the scales of justice, more emphasis, weight and consideration should be given to the integrity of the law and our reliance upon established judicial principles than to merely public or private inconvenience involving problems relating to territorial jurisdiction. Development of property and expansion of utilities based upon void annexations cannot weigh heavier than the public's interest in the preservation of sound legal principles and due process as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION.

For the foregoing reasons and the reasons urged in our Petition, we respectfully urge that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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